

Date of Hearing: June 19, 2012

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

SB 1233 (Padilla) – As Amended: June 11, 2012

SENATE VOTE: 24-14

SUBJECT: Ballot measure petitions: translations.

SUMMARY: Requires the Attorney General (AG), if a proposed initiative, referendum or recall petition is circulated in a county covered by the federal minority language laws, to translate the title and summary of the proposed initiative or referendum, or the recall petition, as applicable, into the applicable languages covered in that county. Specifically, this bill:

- 1) Requires the proponents, at the time of submitting the text of a proposed state initiative or referendum measure to the AG, to submit a list of counties in which the petition will be circulated that are covered by Section 203 (42 U.S.C Sec. 1977aa-1a) or Section 4(f)(4) (42 U.S.C. Sec. 1973b(f)(4)) of the federal Voting Rights Act of 1965 (VRA).
- 2) Requires the AG to prepare a translation for the circulating title and summary of the proposed initiative or referendum in each applicable minority language for the counties identified by the proponents that are covered under the federal minority language laws. Requires the AG to provide a copy of the circulating title and summary of the proposed initiative, its translation, and its unique identifier to the proponents and the SOS within 25 days after the receipt of the fiscal estimate or opinion prepared by the Department of Finance (DOF) and the Joint Legislative Budget Committee (JLBC). Requires the AG to provide a copy of the circulating title and summary of the referendum, its translation, and its unique identifier to the proponents and the SOS within 20 days after the receipt of the proposed referendum.
- 3) Requires the SOS, in the event that the SOS receives from the AG a translation of the circulating title and summary for an initiative or referendum, to provide the relevant translation to the county elections official in each county identified by the proponents.
- 4) Requires the circulator of an initiative or referendum petition that circulates the petition in a county covered by the federal minority language laws to attach the translated circulating title and summary prepared by the AG to the petition and make it available to each person whom the circulator solicits in that language to sign the petition. Requires the circulator to provide a copy of the translated circulating title and summary to any person upon request.
- 5) Requires the proponents of a recall of a state officer, at the time of filing with the SOS two blank copies of the recall petition, to submit to the SOS a list of the counties in which the petitions will be circulated that are covered by the Section 203 or Section 4(f)(4) of the federal VRA.
- 6) Requires the SOS, after ascertaining the proposed petition meets form and wording requirements, to provide a copy of the recall petition and the list of the counties submitted by

the proponents to the AG.

- 7) Requires the AG, within 10 days after receipt of the recall petition and the list of counties submitted by the proponents, to prepare a translation of the petition in each applicable minority language for the counties covered under the federal minority language laws.
- 8) Requires a copy of the translation of the recall petition prepared by the AG to be attached to the petition and available to each person whom the circulator solicits in that language to sign the petition. Requires the circulator to provide a copy of the applicable translation of the petition to any person upon request.

EXISTING FEDERAL LAW:

- 1) Requires a state or a political subdivision of a state to provide voting materials in the language of a minority group when that group within the jurisdiction has an illiteracy rate that is higher than the national illiteracy rate, and the number of the United States citizens of voting age in that single language group within the jurisdiction meets at least one of the following:
  - a) Numbers more than 10,000;
  - b) Makes up more than five percent of all voting age citizens; or,
  - c) On an Indian reservation, exceeds five percent of all reservation residents.
- 2) Requires a state or political subdivision of a state to provide voting materials in the language of a minority group if all of the following apply:
  - a) Over five percent of the voting age citizens were, on November 1, 1972, members of a single language minority group;
  - b) Registration and election materials were provided only in English on November 1, 1972; and,
  - c) Fewer than 50 percent of the voting age citizens were registered to vote or voted in the 1972 Presidential election.
- 3) Defines language minorities or language minority groups, for the purposes of the above provisions, to mean persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage.

EXISTING STATE LAW:

- 1) Requires the proponent of a proposed initiative or referendum to submit the proposal to the AG who must prepare a circulating title and summary of its chief points and purposes. Requires the AG to provide a copy of the circulating title and summary to SOS within 15 days after receipt of the final version of a proposed initiative measure, or if a fiscal estimate is to be included, within the 15 days after receipt of the fiscal estimate prepared by the DOF

and the JLBC, which have 25 days to prepare the fiscal estimate.

- 2) Requires the AG to provide a copy of the circulating title and summary of a proposed referendum measure to the proponents of the measure and the SOS within 10 days after receipt of the proposed referendum.
- 3) Requires the proponents of a proposed initiative or referendum, at the time of submitting the text of the proposed measure to the AG, to pay a fee of two hundred dollars (\$200), which will be refunded to the proponents if the measure qualifies for the ballot within two years from the date of the title and summary.
- 4) Requires the proponents of a recall of a state officer to file a notice of intention with the SOS that includes the name and title of the officer sought to be recalled, a statement of the reasons for the proposed recall, and the name, signature and residence address of each recall proponent. Requires a copy of the notice of intention to be served by personal delivery, or certified mail, to the officer sought to be recalled. Permits the state officer sought to be recalled to file with the SOS an answer to the statement of the proponents. Requires the answer, if any, of the officer sought to be recalled, to be included on the petition. Requires the petition to indicate if no answer was provided.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Purpose of the Bill: According to the author:

The Federal Voting Rights Act of 1965 protects the rights of limited English proficient (LEP) voters by providing language accessible election materials (i.e. official state voter's guide and sample ballot) in their language. In California, the languages covered by the Federal Voting Rights Act include Spanish, Chinese, Vietnamese, Japanese, Korean, and Tagalog.

According to the Migration Policy Institute, in 2009, 58.7% of the California foreign born population was LEP and 46.5% of naturalized citizens age 5 and older were LEP. Among the foreign born, 74% of those who spoke Spanish at home were LEP and 57.5% of those who spoke Asian and Pacific Island languages were LEP.

By failing to provide language appropriate petitions, LEP voters are left out of the process of determining what initiatives qualify for the ballot. As the initiative system continues to play an important role in setting policy in California, it is imperative to provide initiative material in languages set by the Federal Voting Rights Act.

- 2) Voting Rights Act of 1965: The 15<sup>th</sup> Amendment to the United States Constitution provides, in part, "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude." Additionally, the 15<sup>th</sup> Amendment authorizes Congress to enact legislation to enforce its provisions.

Congress determined that the existing federal anti-discrimination laws were not sufficient to overcome the resistance by state officials to enforce the 15<sup>th</sup> Amendment. As a result, Congress passed and President Johnson signed the VRA. The VRA provides, among other provisions, that "[n]o voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge that right of any citizen of the United States to vote on account of race or color."

In 1975, Congress adopted the language minority provisions of Sections 4(f)(4) and 203 of the VRA. Congress extended these provisions in 1982, 1992, and 2006. Sections 4(f)(4) and 203 of the VRA require certain jurisdictions with significant populations of voting age citizens who belong to a language minority community to provide voting materials in a language other than English. These determinations are based on data from the most recent Census.

Specifically, Sections 203 and 4(f)(4) require that when a covered state or political subdivision "[p]rovides registration or voting notices, forms, instructions, assistance, or other materials of information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language."

- 3) New Census Data: On October 13, 2011, the U.S. Census Bureau released a notice of determination of minority language status following the 2010 census. Based on the findings, several California counties will be required to provide materials to voters in new or additional languages. Pursuant to Section 203, the State of California is required to provide bilingual voting assistance to Spanish speakers. Additionally, pursuant to Section 203, 27 of California's 58 counties are individually required to provide bilingual voting assistance to Spanish speakers, and eight counties (Alameda, Los Angeles, Orange, Sacramento, San Diego, San Francisco, San Mateo, and Santa Clara) are required to provide voting materials in at least one language other than English and Spanish. Pursuant to Section 4(f)(4) of the Act, three counties are required to provide bilingual voting assistance to Spanish speakers, though two of those counties are also required to provide assistance pursuant to Section 203. In total, 28 of California's 58 counties are required to provide voting materials in at least one language other than English.

Below is the breakdown of the covered counties and minority languages according to the Federal Register from last year.

Statewide: Spanish

Alameda: Chinese, Spanish, Tagalog, Vietnamese

Colusa: Spanish

Contra Costa: Spanish

Fresno: Spanish

Glenn: Spanish

Imperial: Spanish

Kern: Spanish

Kings: Spanish

Los Angeles: Asian Indian (Bengali & Gujarati), Chinese, Japanese,

Korean, Other Asian (Thai, Khmer, Hindi), Spanish, Tagalog, Vietnamese

Madera: Spanish

Merced: Spanish

Napa: Spanish  
Orange: Chinese, Korean, Spanish, Vietnamese  
Riverside: Spanish  
Sacramento: Chinese, Spanish  
San Benito: Spanish  
San Bernardino: Spanish  
San Diego: Chinese, Spanish, Tagalog, Vietnamese  
San Joaquin: Spanish  
San Mateo: Chinese, Spanish  
Santa Barbara: Spanish  
Santa Clara: Chinese, Spanish, Tagalog, Vietnamese  
Stanislaus: Spanish  
Tulare: Spanish  
Ventura: Spanish

The requirement that election materials be translated does not extend to initiative and referendum materials or recall petitions prior to qualification for the ballot.

- 4) Logistics: Current law requires the SOS to translate all qualified ballot titles and summary for the state voter pamphlet, consequently the SOS already has an established administrative process in place for translating the ballot title and summaries. However, this bill instead places the translation requirement under the guise of the AG, resulting in a new duty for the AG. The committee may wish to consider how this new process would logistically work. For example, if the AG translates the circulating title and summary for an initiative that ends up qualifying for the ballot – would the SOS still be responsible for translating the title and summary for the state voter pamphlet or would the translation from the AG's office be used instead? How would that situation be reconciled? The committee may wish to consider whether it would be more appropriate for the SOS to prepare the translations required by this bill.
- 5) Practical Application: Proponents of the bill argue that limited English proficient voters are left out of the process of determining which measures qualify for the ballot. This bill, by requiring proponents to provide the AG a list of the counties in which the proposed measures will be circulated, will incorporate limited English proficient voters. For example, if proponents want to collect signatures on a proposed initiative in Sacramento County, the AG would be required to translate the circulating title and summary into both Spanish and Chinese. Moreover, proponents who are soliciting signatures for a proposed statewide initiative, referendum or recall petition, would theoretically find it necessary, due to its large population, to solicit signatures for any statewide proposed measure or recall in Los Angeles County. As a result, the AG would be required to translate the title and summary or the recall petition into approximately 11 different languages and the cost of those translations would be absorbed by the state. Currently, according to the SOS's website, there are approximately 42 proposed statewide initiatives cleared for circulation and two that are pending at the AG's office. If this bill were currently in place, the AG would be required to translate the title and summary of all of those measures into multiple languages for circulation.

Additionally, as mentioned above, this bill requires the proponents of an initiative, referendum, or recall petition, at the time of submitting their proposal, to provide the AG

with a list of the counties in which the petition would be circulated so the proposed measure may be translated accordingly. What happens if the proponents decide to add a county that was left off their initial list? Will the proponents be required to start the process all over again or could they submit a secondary request? The committee may wish to consider whether requiring the AG to translate the circulating titles and summaries into every language would make for a more efficient and seamless process for both the AG and the proponents of the proposed measures.

- 6) Costs: Current law requires initiative measures to be translated in their entirety, including title and summary, for the official state voter information guide, if it qualifies for the ballot. Therefore, measures that qualify for the ballot do not present an additional cost to the state. This bill would require the translations of the title and summary to occur earlier in the initiative process. However, translations for an initiative or referendum measure or a recall petition prior to qualification for the ballot will represent new costs. According to the Office of State Publishing, which translates and prints the official state voter information guide for the SOS, the following from 2010 illustrate the costs incurred for translation services:

Spanish:	31 cents per English word (\$31 for 100 word title/summary)
Japanese:	26 cents per English word (\$26 for 100 word title/summary)
Chinese:	28 cents per English word (\$28 for 100 word title/summary)
Vietnamese:	20 cents per English word (\$20 for 100 word title/summary)
Korean:	27 cents per English word (\$27 for 100 word title/summary)
Tagalog:	20 cents per English word (\$20 for 100 word title/summary)

As noted above, eight counties are currently required to translate election materials in one language other than English and Spanish. The committee may wish to consider whether the current \$200 filing fee for submitting a proposed initiative measure to the AG for the title and summary should be raised commensurately to cover the additional costs of translations.

- 7) Recall Petitions: This measure requires the AG to translate recall petitions for state officers. As a result, the entire recall petition, including the explanation for the recall effort, the officer's response to the recall, as well as other aspects on the petition, would be required to be translated. Although there has been a low frequency of state officer recalls – approximately 10 attempts in the last decade, two of which qualified for the ballot – this bill nonetheless would result in a new duty for the AG. The AG is not currently required to be involved in the current processes or procedures involved with recalls of state officials. Additionally, as mentioned above, the SOS already has an established administrative process in place for translating qualified ballot titles and summaries for the voter pamphlet and the SOS is already involved in the recall petition process, as such the committee may wish to consider whether it would be more feasible and efficient to require the SOS to prepare the translations of the recall petitions of state officials.

Additionally, this bill would require recall petitions to be translated in their entirety – something that is not required for other petitions. The committee may wish to consider whether treating petitions differently is appropriate. Additionally, the committee should consider whether this requirement should either be removed from the bill in its entirety or instead make this requirement apply to all petitions.

8) Arguments in Support: The NALEO Educational Fund writes in support:

Our experience in civic engagement has demonstrated that when California Latinos are provided with accessible information about the issues confronting our state, they feel empowered to participate in the electoral process, and will do so more effectively. SB 1233 would help ensure that California voters with limited English proficiency will fully understand initiative and referenda petitions and provide their signatures to such efforts in an informed manner. Furthermore, having access to materials in their native language protects voters from misleading or inaccurate information which might be provided from signature gathers. Ultimately, translated initiative and referenda petitions provide English proficient voters the information they need to ensure that all members of California's diverse electorate have an equal opportunity to participate in California's democracy. For this reason, we strongly support SB 1233.

9) Related Legislation: AB 1814 (Eng) requires each county elections official to report to the SOS regarding the county's compliance with federal and state laws and regulations related to providing voters with language assistance. AB 1814 was approved by this committee on a 4-2 vote, and is pending in the Senate Elections and Constitutional Amendments Committee.REGISTERED SUPPORT / OPPOSITION:Support

The Greenlining Institute (sponsor)  
Asian Americans for Civil Rights & Equality  
Berkeley Organizing Congregations for Action  
California Church IMPACT  
California Common Cause  
California Immigrant Policy Center  
El Concilio of San Mateo County  
Ella Baker Center for Human Rights  
Empower San Diego  
FAME Corporations  
Hmong American Political Association  
Mexican American Legal Defense and Educational Fund  
Mission Language & Vocational School  
National Association of Latino Elected and Appointed Officials Educational Fund  
National Center for Lesbian Rights  
National Council of La Raza  
West Angeles Community Development Corporation

Opposition

None on file.

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